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Letter dated 19 December 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 6 August 2002 (S/2002/900).

The Counter-Terrorism Committee has received the attached supplementary report from Italy, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 17 December 2002 from the Permanent Representative of Italy to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

Following your letter dated 15 July 2002, I have the pleasure to enclose herewith the further information provided by the relevant Italian authorities on the current implementation of Security Council resolution 1373 (2001) (see enclosure).

(*Signed*) Sergio **Vento**

Enclosure

Supplementary report presented by Italy

to the United Nations Security Council
Counter-Terrorism Committee (CTC)

Sub-paragraph 1 (a)

A Special Working Group has been set up to expedite the ratification procedure for the International Convention for the Suppression of the Financing of Terrorism and to examine the changes which have to be made to Italy's domestic legislation. The CTC would be grateful to receive a progress report on those changes.

For the reply refer to sub-paragraph 3(d) below.

As a member of the G-20, Italy has pledged to stop abuse of informal banking networks. Please comment on how this is or will be reflected by Italian legislation.

One way the terrorist organisations finance themselves is through the so-called informal banking circuits. Using these underground circuits, the terrorist organisations are thought to be able to build up and transfer vast amounts of money. These operations are based on the mutual trust established between their members, and they are known in different countries by specific names, such as Hawala Banking (United Kingdom, India, Pakistan) Hundi (Middle East), Citi Banking (Asia), Chop Shop Banking (China), and Stash House (United States, Latin America). Regardless of the name used, the informal banking circuit transfers huge sums of money from one country to another without passing through the traditional financial transfer circuits, without leaving any traces of the operation, but above all without the money being "physically" transferred at all. These circuits work in a fairly similar way to the money transfer systems, which are licensed to operate on the legal markets, with the sole difference that the informal ones operate completely underground.

This being so, it is quite likely that these 'alternative systems' make it possible to transfer cash to countries where, for political stability reasons, no efficient financial structure exists. They also enable the organisations managing them to earn huge commissions (to guarantee that the transfers safely reach their destination) or to finance terrorist organisations by partly or completely using these commissions to fund them. Lastly, one can imagine that the measures to curb money laundering in the formal banking system is actually a boon for the informal system, because of their effect on competition. One need only think, for example, of the reluctance of an illegal immigrant, without any identity documents, or simply without a residence permit, to use the legal financial system to transfer funds home, considering that now nearly every Western country requires anyone wishing to transfer money abroad to give proof of identity.

In all likelihood, illegal immigrants will either use the official financial circuits through a friend (probably a money transfer agency) or resort to the illegal financial circuit created by their home community. Hence the close linkage with the extremely topical phenomenon of illegal immigration, with highly developed forms

of financial abuse and/or illegal banking operations. In this connection, it should be noted that Italian Finance Police (*Guardia di Finanza, GdF*) are currently conducting widespread investigations into this whole area.

Please provide the CTC with copies of the guidelines for the "Committee for co-coordinating intelligence on financial assets"?

Since its inception, this Committee has aimed at acting as a forum for matching the most important findings of the work of the Financial Security Committee, chaired by the Director-General of the Treasury, with the task of monitoring the operation of the system for preventing and suppressing the illegal financing of terrorism. It has worked with the participation of the representatives of the Ministries of Economy and Finance, Foreign Affairs, Industry, and the Intelligence Services.

This Committee, which was installed on 4 March this year, has met each month focusing its work on financial transactions related to terrorism, including the export of dual-use products and the possible risks of the infiltration of terrorist groups among the purchasers of chemical, biological and radiological materials connected with the non-conventional threat. The goals pursued so far regarding the identification of financial transactions to terrorist organisations and individual terrorists have made a specific contribution to the international organisations in their assessment of the names on the United Nations lists and for the drafting of the European Union's lists for the purposes of applying measures to freeze assets. The role of the Committee has therefore been that of boosting a mutual exchange of information, protected by the necessary degree of confidentiality, between all the economic and financial entities and the intelligence services, in order to develop and organise a common operational strategy.

Which penalties apply for violations of EU regulations aimed at preventing and suppressing the financing of terrorism?

Article 2 of Decree Law No 369/01, enacted as Law No 431 or 14 December 2001, introduces penalties for all breaches of the Regulations adopted by the European Union Council, also in implementation of the United Nations Security Council Resolution, rendering them null and void. Infringements are punished with an administrative fine of not less than one half the value of the transaction and not more than twice its value. Financial intermediaries as well as insurance companies are also obliged to notify the Ministry of the Economy and Finance of the amount of capital frozen and any other financial resources frozen, within thirty days of the date on which the capital or the resources were constituted. In the event of failure or delay in submitting this notification, where a criminal offence is not involved the offender becomes liable to an administrative fine.

In this connection it is relevant to note the way the financial channels are being monitored in Italy to combine national legislation with a constant updating of international cooperation instruments. At the same time as the measures for criminalising money laundering were being adopted(1) Italy incorporated into domestic legislation the International Financial Action Task Force (FATF) Recommendations(2) and Community Directive 91/308. With regard to the latter (under Legislative Decree No 153/97) all the information received from the financial intermediaries, which had previously been addressed to the *Provincial Chiefs of Police* (Questori) who forwarded it to the Head of the Police Force and the *Special*

Currency Police Unit (Nucleo Speciale Polizia Valutaria, NSPV) of the Guardia di Finanza (GdF) is now centralised at the *Italian Exchange Office* (Ufficio Italiano dei Cambi — UIC) (3). After conducting a financial analysis of the environments involved, the UIC forwards the notices together with its own reports, to the NSPV, and to the Anti-Mafia Investigation Directorate (DIA). In order to guarantee coordination and prevent duplication and overlapping between the GdF and the DIA a MoU has been signed under which the former deals with Mafia-related crimes, while the GdF deals with other crimes.

The money-laundering prevention measures according to these rules and regulations, and their effectiveness, have been praised by the FATF, which — in its 1998 report on Italy — emphasised the appropriateness of involving in combating these activities only two investigating organisations from the financial point of view, as well as the long standing cooperation between UIC and NSPV. For this solves many of the coordination problems that other countries encounter when they have a larger number of investigative agencies involved to counter money-laundering. Lastly, in June 2001, at the FATF Plenary meeting to ascertain the level of preparation of the statutory provisions and the operational arrangements of individual member countries of the Group, in view of the likely risk of money-laundering connected with the introduction of the euro, the rules adopted by Italy were once again considered to be particularly appropriate and in line with the standards suggested in the Recommendations issued by the FATF.

In addition to the foregoing, Legislative Decree No 374 of 25 September 1999 extended the obligations provided by Law No. 197/91 to include classes of companies which, while not performing financial transactions themselves, could at all events be exploited for money-laundering purposes(4). This provision is not yet in operation because the inter-departmental regulation for its implementation is still being drafted. The system for detecting and reporting suspicious operations has also been completed by a number of other provisions designed to make it possible to monitor currency operations in both directions between Italy and abroad. This subject-matter — after decriminalising currency offences (with Law No 455 of 21 October 1988) and after the enactment into Italian law of Directive 88/361/EEC, which "lifted restrictions on capital movements between individuals resident in the member states" — was regulated by Law No 227 of 4 August 1990, with the introduction of the so-called "statutory channelling" system for transactions involving sums in excess of 20 million lire, requiring this to be done through banking and financial intermediaries. Subsequently, Legislative Decree No 125 of 30 April 1997 replaced the "statutory channelling" system with the obligation to declare all money transfers in excess of 20 million lire to the UIC.

The measures to counter money-laundering were further enhanced with the institution of the Accounts and Deposits Register under Section 20(4) of Law No 413 of 30 December 1991. A specific working party set up at the Ministry of the Economy and Finance is currently conducting activities designed to define the structural and regulatory organisational features of this new regime. All these measures will be implemented by a variety of government agencies and institutions, including the GdF, each drawing on their specific professional skills.

Sub-paragraph 1 (c)

According to the report, "banks and financial intermediaries" have been instructed to promptly notify the Italian Exchange Office and Financial Intelligence Unit (UIC) "of any operations and relations" connected with the financing of terrorism Please explain what is meant by "relation", and how Italian legislation defines "financial intermediaries".

According to the UIC regulations of 9.11.2001 laying down guidelines for combating the financing of terrorism, the banks and other financial intermediaries are required to notify the UIC of all transactions, relations and any other information available that can be related to the financing of terrorist organisations or the individuals named in the lists disseminated by the UIC. The term "relations" is obviously used in order to be as comprehensive as possible, and it therefore includes current accounts, deposit accounts, and all other continuous relations, both to bearer or to named persons, in cash or in securities, of all amounts, as specified in Ministerial Decree No 19.12.91 which lays down the procedures for implementing the provisions of Law No 197/91.

In the Italian system, "financial intermediaries" are those currently listed in Section 2 of Law No 197/91 (government offices, banks, insurance companies, trust companies, etc., including all intermediaries whose main business is granting loans, acquiring equity interests, currency brokering, cash collecting, payment services and funds transfer services). It should also be recalled that the present list of financial intermediaries has now been partly superseded, and is also less comprehensive than the rules that have been enacted since 1991; furthermore, the new Community directive 97/2001/EC on combating money-laundering has also introduced a number of amendments in this area, and has set a deadline of June 2003 for all the member states to update their list of financial intermediaries.

In this context, what penalties apply to financial intermediaries which fail to promptly notify these "operations and relation"?

Failure to report to the UIC any operations and relations linked to the financing of terrorism renders the intermediaries liable for an administrative fine of up to one-half the value of the transactions under Section 5(5) of Law No 197/91.

Please outline the legal basis on which the UIC is able to issue legally binding instructions to freeze funds belonging to individuals or organizations which do not appear in lists attached to legislative acts of the European Union, but do appear in other lists published on the website "www.uic.it/liste/terrorismo.htm"?

The work of the UIC regarding reporting of suspect operations for the purpose of combating money laundering is based on the provisions of Legislative Decree No 153 of 26.5.1997. Using its functional, organisational and operational independence (vested in it by Section 3-ter of Law No 197/91 introduced by the aforementioned Legislative Decree No 153/97), the UIC issued its own circular on 22.8.1997 laying down instructions for the reporting of suspicious operations, which now apply also to crimes relating to the financing of terrorism. Furthermore, the UIC has issued instructions (Circular dated 9.11.2001, published in the Official Journal No. 266 of 15.11.2001), for the financial combating of terrorism, particularly by requesting banks and other financial intermediaries to report operations, relations and any other

information available linked to individuals named on the lists published by the UIC, also by publication on the Internet. This statutory framework of reference was subsequently defined systematically by Section 3-ter of Law No 73 of 23.04.2002 which incorporated into Section 1 of Legislative Decree No 369/2001 a subsection 4-bis which provides that "the powers of the UIC and the NSPV pursuant to the current provisions for taking preventive action against financial systems used for money-laundering are exercised by the same agencies that are responsible for combating the financing of international terrorism".

What measures has Italy taken or does it propose to take to freeze funds or other assets or economic resources of a person or entity supporting terrorism in Italy or any other EU country?

Drawing on its experience with combating terrorism and thanks to the vast amount of legislation and regulations that have been issued over the years, Italy was able to react quickly to the events of 11 September. The adjustment of Italian legislation was completed and the operational procedures have been enhanced and are now fully effective. Combating the financing of terrorism is a fundamental priority, and through the work of the CSF Italy has acted efficiently and rapidly to block the assets of individuals or terrorist organisations in full implementation of the obligations stemming from UNSCR 1390, and to apply the penalty mechanism introduced by the European Union. The CSF is the authority responsible for drafting Italy's proposals for incorporating the names of individuals or terrorist groups on the United Nations list (pursuant to the UNSC Resolution 1267, and subsequent Resolutions) and of the European Union (pursuant to Regulation 2580/2001 and the Common Position 931/2001). With the special functions adopted, it has gathered intelligence in the possession of government offices, waiving the Official Secrets Act, and requesting the UIC, CONSOB and GdF to carry out further investigations in order to back up the allegations against the proposed names.

Italy has established close and ongoing cooperation with agencies performing similar functions to the CSF in other countries, and has made an active contribution to the drafting of the joint list of the G7 countries, as well as a joint list with the United States, both of which have been put to the UNSC in the framework of Resolution 1390. According to the latest data updated to 11 September 2002, 70 accounts have been frozen belonging to 70 persons, totalling euro 483,000.00.

Where an application has been made to freeze assets belonging to individuals or entities not envisaged by Community regulations, an ad hoc measure has had to be created. There are also administrative instruments that have made it possible to pre-emptively seize funds suspected of belonging to terrorists. Under Italian legislation, a criminal seizure order can also be used to freeze economic assets and financial resources traceable to terrorist organisations. The subject matter of a criminal seizure order can be any asset or any resource provided that such assets or resources are connected with criminal activities forming the object of a criminal investigation or an ongoing criminal case. Updated data, communicated directly to the CSF by the Italian Public Prosecutors' Offices involved with these measures indicate that over euro4 million have been seized so far.

One very important novelty which will enable Italy to lead the way in the European Union is a draft law providing a procedure for freezing non-financial assets, which will obviate the problems relating to identifying who is responsible for freezing

them and the manner of implementing freezing measures and the problems relating to the custody and management of the frozen assets. Combating money-laundering can only be effective if it also deals with non-financial issues, and Italy's past experience will be placed at the disposal of our international partners.

Sub-paragraph 1 (d)

How does the financial tracking system ensure that funds received by associations are not diverted from their stated purposes to terrorist activities?

At the present time there are no specific provisions regarding the use of funds diverted for terrorist activities by associations of any kind, apart from the general rules governing money-laundering when the money is channelled through banks or other financial intermediaries which are required to identify the parties and register transactions above a certain threshold, and any suspicious operations and transactions.

Sub-paragraph 2 (a)

European Council Directive 91/477/EEC imposes on Italy, along with all other member States of the EU an obligation to permit the acquisition of a certain category of weapon only by persons who have a good cause to have such a weapon and are not likely to be a danger to public order or safety. The CTC would be grateful far clarification of what constitutes a "good cause" in Italy for these purposes and of the procedure for determining whether a person poses a danger to public order and safety.

Directive 91/477/EEC on the control of the acquisition and holding of weapons within the Community (which was incorporated into the Italian legal system under Legislative Decree No 521 of 30 December 1992 and Decree No 635 of 30 October 1996) subdivides weapons into four categories: category A are prohibited weapons, namely weapons of war to which the provisions of the Directive do not apply, category B which are weapons subject to authorisation, and categories C and D which are subject merely to submission of a declaration. In Italy, Directive 91/477/EEC was incorporated into Italian law on a more restrictive basis than the Community Directive; for Italian legislation provides that category C and D weapons, namely those for which the Directive only makes provision for reporting in order to be able to acquire or transfer them, now form part of category B, which require a specific license for their manufacture, import, export, collection for reasons of trade or industry, and their sale. Furthermore, as far as the issue of authorisation to bear firearms for personal defence purposes which obviously do not fall under category A (prohibited firearms), provision is made for the applicant to prove a manifest need and just cause, and for the authority to verify that there is both a need and a just cause, in a case by case basis.

The joint provisions of Sections 11 and 43 of the Public Security Act Italian (approved by Royal Decree No 773 of 18 June 1931) provides that authorisation cannot be issued by the police to carry weapons to any person who has been convicted and sentenced to more than three years' imprisonment for crimes committed deliberately and with malice aforethought, or persons who have been subjected to detention for the sake of security, or have been declared habitual or professional criminals, or to have criminal tendencies, or anyone convicted of

crimes against the state or public order, or for crimes committed against the person with violence, or for theft, robbery, extortion, kidnapping for the purposes of robbery or extortion, or for violence or resisting arrest.

Please explain how Italy deals with the issue of recruitment of members of terrorist groups, both inside and outside Italy, on the basis of Article 270 bis of the Penal Code?

"The recruitment of members of terrorist groups" is a typical crime provided by Article 270-bis of the Penal Code. For recruitment is one of the ways in which a conspiracy for the purposes of terrorism, including an international conspiracy, is "promoted, constituted and organised". It follows from this that the recruitment of members per se (independently, in other words, of whether or not any other crimes are committed) is a crime punishable under Article 270-bis of the Penal Code. When an investigation into this kind of recruitment is being conducted, all the investigative instruments introduced by Legislative Decree No 374/2001 (illustrated in paragraph 2 (a) of the first Italian report to the CTC)can be brought into operation.

The question of the recruitment of members of terrorist groups is governed by a specific act of Parliament under current legislation: Law No 210 of 12 May 1995, which ratified and brought into effect the International Convention of the United Nations General Assembly of 4 December 1989 against the recruitment, use, financing and training of mercenaries. This law expressly provides for penalties to be imposed under Italian law on anyone recruiting individuals for the purpose of inciting them to commit the crimes provided by Section 3 of the Act (in this specific case, participation in violent actions designed to change the constitutional order or the territorial integrity of a foreign state) in two cases: a) a crime committed abroad by an Italian citizen, b) a crime committed abroad by a foreign national, who, at that time, was in Italy and for whom extradition has not been granted or accepted. The penalties provided range from four to 14 years' imprisonment.

The new text of article 270-bis of the Penal Code (as amended by Law No 438 of 15 December 2001) is more general in scope and provides penalties for anyone who promotes, constitutes, organises, manages or finances conspiracies for the purpose of terrorism, including international terrorism. Any extension of the coverage of the criminal provision to apply to recruitment is therefore left to the courts to decide. On the basis of the principle of the territoriality of criminal law, this provision gives the Italian courts full jurisdiction to try all crimes committed in Italy, and also make provision for anyone who has been responsible for committing terrorist acts abroad or according to Article 7 of the Penal Code for crimes against the personality of the Italian state to be tried and punished.

Sub-paragraph 2 (b)

Which Italian institutions are responsible for providing early warning to other States and what measures have they taken in this regard?

Exchanges of intelligence and hence the transmission of urgent information regarding the national security of other states is handled by the "Central Directorate for Preventive Policing" ('Direzione Centrale della Polizia di Prevenzione') on behalf of the Department of Public Security. This Directorate is the national contact

point for the Police Working Group on Terrorism (PWGT) which at the moment comprises 21 countries (the 15 EU countries plus Switzerland, Norway, Poland, the Czech Republic, Slovenia, Slovakia and Hungary) and which uses a direct encrypted system for exchanging intelligence. Intelligence is communicated to other countries that do not have this direct contact via Interpol, or via Europol in the case of European Union member states.

It should also be remembered the 'anti-terrorism contact points' channel set up by the Conference of Western Mediterranean Countries (which includes Italy, Portugal, Algeria, France, Spain, Morocco, Tunisia, Libya and Malta) and by the Euro-Mediterranean Partnership, in which the 15 countries of the European Union participate with 12 Mediterranean countries participate (Algeria, Cyprus, Egypt, Israel, Jordan, Lebanon, Malta, Morocco, Syria, Tunisia, Turkey, the Palestinian Authority).

In the intelligence sector, relations with other states fall within the jurisdiction of the Intelligence and Security Services.

Please provide the CTC with information on the mechanism for inter-agency co-operation between the authorities responsible for narcotics control, financial tracking and security with particular regard to border controls preventing the movement of terrorists.

With regard to the border control of terrorists, Italy still uses the "Border Register" system in its various forms (4R: rejection; 5R: customs search; 6R: confidential surveillance report; 7R: identification) particularly with regard to controlling the external Schengen borders (for Italy, Switzerland and Slovenia). With the accession of Italy to the Schengen Accords, the Schengen system is also used for the same purposes through articles 95 (arrest); 96 (rejection) and 97 (customs control and identification) throughout the whole of the territory of the Schengen group of countries. The Border Police, who have the institutional duty to check everyone entering the Schengen area through authorised crossing points, are operationally capable of identifying everyone against whom a report or a police or court measure has been issued, also connected with matters of terrorism. The procedure used for controlling them is the SIS (Schengen Information System) which is an immediate operational cooperation system because it is a common databank that all the partner countries may consult.

Sub-paragraph 2 (c)

By which criteria does Italy define "most sensitive areas" and "most sensitive countries", terms which appear under sub-paragraph 2 (c) (a) of the report?

With regard to air safety, the National Security Programme drawn up by the Interdepartmental Committee for Security introduces the "sensitive flight" concept. This refers to flights connecting countries from which it is possible that a terrorist threat might come, or countries considered to be at risk as possible terrorist targets. These states make up a list ("sensitive countries"), for which this Programme provides the updating and revision procedure.

The concept of "sensitive country" is also important, although the conditions and the purposes differ, for the issue of visas and border permits. In this case consultation with the Central Security Authorities is required for nationals coming from a

number of countries which Schengen states identify as deserving attention from the point of view of national security.

Sub-paragraph 2 (e)

Please elaborate on how Italian law criminalises terrorist acts against foreign citizens, especially when those acts are perpetrated abroad?

What is the competence of the courts of Italy to deal with criminal acts of the following kinds: an act committed outside Italy by a person who is a citizen of, or habitually resident in, Italy (whether that person is currently present in Italy or not); an act committed outside Italy by a foreign national who is currently in Italy?

Italian jurisdiction in respect of acts of terrorism committed within Italy or abroad by Italian or foreign nationals is subject to the general rules of the Penal Code. There are specific rules dealing only with political crimes committed abroad, but the Italian state no longer considers terrorist acts to be political crimes.

On the basis of general rules, acts of terrorism committed against foreign citizens on Italian soil are dealt with under Italian law, pursuant to Article 6 of the Penal Code (the territoriality principle of criminal law). A terrorist act is deemed to have been committed within the territory of the Italian state when the criminal conduct or its effects occur entirely or even partially (when, for example, weapons are supplied in Italy for the commission of a terrorist act abroad) on Italian soil.

Terrorist acts committed against foreign nationals abroad may be tried before Italian courts of law if the accused is an Italian national and provided that the accused is on the territory of the Italian state. If, conversely, the person committing the terrorist act is a foreign national, the Italian courts only have jurisdiction if the act has been committed against the Italian State or against an Italian national. Under this system, Italian jurisdiction depends on citizenship, not residence. This means that the habitual residence in Italy of a foreign national who has committed an act of terrorism abroad does not give jurisdiction to the Italian courts (unless the general condition mentioned above obtains, namely, the act has been committed against the Italian State or against an Italian citizen.

Sub-paragraph 2 (f)

Is the existence of a bilateral or multilateral agreement or arrangement a pre-requisite for the offering by Italy of legal assistance to other countries, as requested by this sub-paragraph?

What is the legal timeframe within which a request for judicial assistance in criminal investigations or criminal proceedings (especially those relating to the financing or support of terrorist acts) must be met and how long, on average, does it actually take in practice to implement such a request in Italy?

The existence of bilateral agreements and, where these do not exist, multilateral agreements governing criminal judicial assistance and extradition, are not a *conditio sine qua non* for the purpose of criminal judicial cooperation. Cooperation is indeed

also based on the principles of "international courtesy" and reciprocity, and the domestic procedure is governed by the rules of the Code of Criminal Procedure.

Any request for judicial assistance in criminal matters must be made as a rule on the basis of existing conventions whether multilateral or bilateral, governing the subject matter. Where these do not exist, cooperation takes place on the basis of the principles of "international courtesy" and reciprocity, through the diplomatic channels. The request must be accompanied by the relevant documentation according to the terms of the relevant Convention or the Agreement with the requesting Party. It is difficult to establish exactly the duration, since it varies depending upon the complexity of the procedure for complying with the request and the channel of transmission used, or whether it is based on the principle of "international courtesy" and reciprocity, and whether the domestic procedure is governed by the provisions of the Code of Criminal Procedure.

Sub-paragraph 2 (g)

How has Italy implemented, or how does it plan to implement, controls on its maritime borders and ports in order to prevent the movement of persons involved or alleged to be involved in terrorist acts?

In the understanding that, so far, no evidence has ever emerged from investigations or the courts to suggest any close linkage between illegal immigration and terrorism, at least in its principal forms (by sea or across land borders) controls in ports are conducted in accordance with national rules and in compliance with the procedures set out by the Common Manual for the Schengen Borders and the decisions of the Schengen Executive Committee.

As far as the traffic in illegal immigrants by sea is concerned, Italy's commitment to combating this is common knowledge, and it also involves the Italian Navy, the Harbour Masters' Corps (*Capitaneria di Porto*) and all the police forces. Illegal immigrants, without any distinction whatsoever, are photographed and fingerprinted and are deported from Italian territory or, if they apply for political asylum, they are either granted a stay permits or repatriated to their home country when Italy has concluded a re-entry agreement of this kind. There is also close cooperation for the exchange of intelligence and for conducting joint operations between the local organisations responsible for combating terrorism and intelligence (DIGOS) and the maritime Border Police.

To complete this information, freight traffic is also controlled, and the GdF plays a major operational role in this regard. Their main operations include checking goods as they exit from customs areas by systematically and thoroughly analysing them, and by taking robust action and targeted investigations conducted locally. Considering the general need for international trade to be streamlined, rapid and fluid, another approach is the use of modern technologies which make it possible to carry out prompt and effective non-invasive checks on containers. In this regard, the GdF, under a broader operational programme designed to guarantee "security for the development of southern Italy" has acquired seven mobile systems (the Silhouette Scan model) for the non-invasive radiographic control of containers, and large vehicles using X-ray scanning of the cargoes in order to inspect the contents. This system is used with excellent results to control canvas-covered trucks, refrigerated vehicles, tanker trucks, and articulated and container trucks, and all large vehicles

which, because of the transport system or technical features cannot be inspected using traditional methods, or which make such traditional methods extremely difficult.

Furthermore, Italy has concluded an agreement with the US on the "Containers Security Initiative", a system which hopefully would be extended to all the EU member states.

Please provide the CTC with a progress report on the establishment of "forging entry and stay documents" as a criminal offence.

In the field of combating illegal immigration, in the broad sense of the term, Law No 189 of 30 July 2002 enacting "Amendments to Immigration and Asylum Law" created the crime of forging or altering stay permits, the stay contracts or residence cards, and any other document to be used for the issuance of any of these documents (for example a passport or a visa). This new crime brings with it more severe penalties (from one to six years' imprisonment) and hence liability to arrest, than those provided for forgery crimes under the Penal Code.

Current Italian criminal law does not make any specific provision for the crime of "forging entry and stay documents". The crime can nevertheless be prosecuted under the provisions of Title VII of Book II of the Penal Code on "crimes against public faith" and in particular Article 482 (material fraud committed by private individuals) which provides a term of imprisonment from a minimum of two years eight months to a maximum of six years and eight months for various types of crime falling within this category.

Sub-paragraph 3 (a)

Please explain how Italy intends to implement this sub-paragraph, in particular as regards the use of communication technologies by terrorist groups, given that sections 4 and 5 of Decree Law 374/2001 provide for the possibility of preventive wire-tapping and of the interception of communications.

On the subject of wiretapping, the anti-terrorism legislation (Law No 438 of 2001) extends to this area two provisions that have been successfully tested out in combating organised crime. These make it possible to use more flexible investigative tools. The first provision belongs to what one might call the "judicial" investigation phase, while the second is preventive or pre-emptive in character and belongs to in the phase of the investigations conducted for pre-emptive/preventive purposes or to gather intelligence and information.

As far as "judicial" wiretapping is concerned (requiring an order issued by the Investigating Magistrate) Section 3 of the Law provides that as an exception to the normal rules governing wiretapping under Articles 266 et seq of the Penal Code, in the case of proceedings for crimes connected with terrorism (Article 270-bis Penal Code) and those referred to in Article 270-ter Penal Code (aiding and abetting fellow conspirators) authorisation for wiretapping can also be issued when there is sufficient prima facie evidence of guilt (and not requiring grave evidence of guilt, as is normally the case) and provided that these operations are necessary (rather than indispensable) to be able to pursue the investigations.

The interception of communications and eavesdropping on persons present can be authorised to be done in private houses without the requirement of well-founded reasons that criminal activities are taking place. In this phase known as the "preliminary investigation" phase under to Article 266-bis of the Code of Criminal Procedure, with the authorisation of the Courts, it is also possible to hack into computer systems or computer networks, or intercept the data exchanges between several systems.

A different set of rules and a different scope is applied in the case of the "pre-emptive" wiretapping and interception referred to in Section 5 of Law No 438/2001 which enacted Legislative Decree No 374/2001. These new provisions make it possible to intercept communications or to eavesdrop on correspondence by computer or conversations between persons when it is necessary to acquire information to prevent crimes being committed for the purposes of terrorism, and makes it possible to use this information-gathering instrument at a time "prior" to the actual commission of the crime, provided that two conditions are met: evidence resulting from the investigations that justifies the pre-emptive activity and an assessment by the public prosecutor showing that it is necessary. The two types of interception of communications differ in their purpose: the law specifically provides that no evidence acquired by pre-emptive interception may be used in criminal proceedings or mentioned in the investigative reports or in a deposition, or be otherwise disclosed. The situation is quite different in the case of court-authorised interception, because such forms of interception are the instrument used to gather evidence to be used in a criminal trial.

Sub-paragraph 3 (c)

With which other countries has Italy concluded agreements to combat terrorism other than those listed in sub-paragraph 3 (c) of the report? Has an agreement been concluded with the Libyan Arab Jamahiriya?

After the presentation of the first report to the CTC, the following agreements have either been signed or negotiated (these have already been set out in the Italian report to the CTC on technical and financial assistance for the purposes of combating terrorism):

IRAN. In addition to the *Memorandum of Understanding* against illegal drugs trafficking signed in Rome 10 March 1999, a Security Cooperation Agreement has been signed in Rome on 31 October 2002.

LATVIA. The Cooperation Agreement on the fight against organized crime, terrorism and drugs trafficking is at an advanced stage of negotiation.

SLOVAKIA. A Cooperation Agreement on the fight against organized crime, terrorism and drugs trafficking has been signed on 19 April 2002.

LIBYA. The Cooperation Agreement on the fight against organized crime, terrorism, drugs trafficking and illegal immigration (signed in Rome on 13 December 2000) has been ratified by both Parties and is expected to enter soon into force.

The CTC would be grateful to know with which countries Italy has entered into bilateral treaties on extradition and mutual legal assistance.

The following is a list of Extradition Treaties currently in force for Italy.

ARGENTINA

Extradition treaty, signed on 9 December 1987.

AUSTRIA

Extradition treaty, signed on 2 August 1985

Convention on the extradition of wrongdoers, signed on 6 April 1922

Additional Convention to the Convention of 6 April 1922 on the extradition of wrongdoers, signed on 26 March 1934

Additional agreement to the European extradition convention of 13 December 1957 and agreement to facilitate its enforcement signed on 20 November 1973

BAHAMAS

Exchange of Notes to keep the Italo-British extradition convention of 5 February 1873 in force, signed on 7 August 1980

BELGIUM

Convention on the mutual extradition of wrongdoers, signed on 15 January 1875

Declaration amending article 16 of the Convention of 15 January 1875, signed on 10 March 1879

Declaration amending the extradition convention of 15 January 1875, signed on 30 December 1881

Declaration amending the extradition convention of 15 January 1875, signed on 28 January 1929

BOLIVIA

Friendship and extradition treaty, with declaration, signed on 18 October 1890

Exchange of Notes to amend article 3 of the friendship and extradition treaty of 18 October 1890, signed on 24 March 1967

BRAZIL

Extradition treaty, signed on 17 October 1989

CANADA

Extradition treaty, signed on 6 May 1981

COSTA RICA

Convention for the mutual extradition of wrongdoers signed on 6 April 1873

COUNCIL OF EUROPE

European Extradition Convention (24) signed on 13 December 1957

Second additional protocol to the European extradition convention (98) signed on 17 March 1978

Convention on the transfer of sentenced persons (112) signed on 21 March 1983

CUBA

Extradition treaty signed on 4 October 1928

Exchange of Notes on the interpretation of article 4 of the extradition treaty of 4 October 1928, signed on 2 March 1932

EL SALVADOR

Extradition treaty, signed on 29 March 1871

EUROPEAN UNION

Agreement between the Member States of the European Communities on the Simplification and Modernisation of Methods of Transmitting Extradition Requests signed on 26 May 1989

FEDERAL REPUBLIC OF GERMANY

Exchange of Notes to temporarily regulate the mutual application of a number of provisions of the European extradition Convention of 13 December 1957 and the European convention on mutual assistance in criminal matters of 20 April 1959 signed on 18 July 1972

Additional agreement to the European Extradition convention of 13 December 1957 to facilitate its implementation signed on 24 October 1979

FINLAND

Treaty on judicial mutual assistance and extradition on criminal matters signed on 10 July 1929

FRANCE

Convention on the mutual extradition of wrongdoers, signed on 12 May 1870

Declaration specifying the meaning of article 1 (23) after the Extradition Convention of 12 may 1870, signed on 16 July 1873

HUNGARY

Convention on judicial mutual assistance on criminal matters and extradition signed on 26 May 1977

KENYA

Exchange of Notes confirming the Italo-British Convention of 5 February 1873 for the mutual extradition of wrongdoers signed on 8 December 1967.

LEBANON

Convention on mutual judicial assistance on civil, commercial and criminal matters and the enforcement of judgments and arbitration awards and extradition orders signed on 10 July 1970

LUXEMBOURG

Extradition Convention signed on 25 October 1878

MALTA

Mutual extradition agreement regarding persons convicted of certain crimes signed on 3 May 1863

Italo-British Convention on the mutual extradition of wrongdoers signed on 1 April 1873

Agreement on the extradition of wrongdoers signed on 13 October 1880

MOROCCO

Convention on mutual judicial assistance to enforce court judgments and extradition orders signed on 12 February 1971

MEXICO

Convention on the extradition of wrongdoers signed on 22 May 1899

MONACO

Convention on the extradition wrongdoers signed on 26 March 1866

Declaration amending article 14 of the extradition Convention of 26 March 1866 signed on 19 December 1896

NETHERLANDS

Extradition Convention signed on 28 May 1897

NEW ZEALAND

Italo-British extradition Convention signed on 5 February 1873

PARAGUAY

Extradition treaty signed on 19 March 1997

PERU

Treaty on the transfer of persons convicted and minors undergoing special treatment signed on 24 November 1994

POLAND

Extradition treaty signed on 28 April 1989

PORTUGAL

Extradition treaty signed on 18 March 1878

SINGAPORE

Italo-British convention for the mutual extradition of wrongdoers signed on 5 February 1973

SRI LANKA

Italo-British convention for the mutual extradition of wrongdoers signed on 5 February 1873

TUNISIA

Convention on judicial assistance in civil, commercial and criminal matters, the recognition and enforcement of judgments and arbitration awards and extradition signed on 15 November 1967

UNITED STATES OF AMERICA

Extradition treaty signed on 13 October 1983

URUGUAY

Extradition convention signed on 14 April 1879

VENEZUELA

Treaty on extradition and judicial assistance in criminal matters signed on 23 August 1930

YUGOSLAVIA

Convention on the extradition of wrongdoers, signed on 6 April 1922

Furthermore, Italy has initiated contacts or negotiations with a dozen Countries with a view to concluding further extradition agreements.

Sub-paragraph 3 (d)

The CTC would welcome a report, in relation to the relevant international conventions and protocols relating to terrorism, on the steps taken with regard to:

– becoming a party to the instruments to which Italy is not yet a party;

Following the presentation of the first report to the CTC at the end of last year, Italy deposited its instrument of accession to the Convention on the need to mark plastic explosives in order to make them recognisable, with ICAO on 26 September 2002. This Convention was opened for signature in Montreal on 1 March 1991, and became effective in Italy on 25 November 2002.

Italy is also party to 10 of the 12 international conventions on combating terrorism, excluding the International Convention on the Suppression of Terrorist Bombings and the Convention on the Suppression of the Financing of Terrorism, which have reached now the final stage of the ratification procedure. Since the ratification Acts not merely give full effectiveness to the Conventions in Italy but also include provisions to amend domestic legislation to bring it wholly into line with the provisions of these international instruments, Italy will report on their exact content once the ratification procedures have been completed.

– enacting legislation, and making other necessary arrangements, to implement the instruments to which it has become a party.

The multilateral treaties against terrorism to which Italy is a party, namely the first 10 United Nations Conventions and the European Convention on the Suppression of Terrorism, mainly lay down obligations to criminalize certain offences. More detailed provisions, particularly in relation to international judicial cooperation and prevention, are set out in the two recent United Nations Conventions. In order to implement the Conventions, Italy has introduced in its legislation two new crimes,

or it has introduced amendments to existing law where they were deemed to be inadequate. The general framework of Italian criminal statute law to implement these Conventions comprise common crimes, and crimes where the fact that terrorism is the purpose behind them is expressly taken into account. Among the former crimes are included in particular all those which include elements of violence against property or persons, and in particular those against the constitutional organs, heads of national and foreign states, and representatives of foreign states (Articles 289, 295 and 298 of the Penal Code). The latter ones in particular are referred to in Articles 270-bis (as amended by Law No 438/2001) on "associations for the purposes of terrorism, including international terrorism, and the subversion of the democratic order"; Article 280 on "attacks for terrorist or subversive purposes" and Article 289-bis "abduction for the purposes of terrorism or subversion".

Sub-paragraph 3 (e)

Have the offences set forth in the relevant international conventions and protocols relating to terrorism been included as extraditable offences in the bilateral treaties to which Italy is party?

Except for one Agreement which became effective in Italy between the Italian Republic and the Socialist Republic of Czechoslovakia on the provision of judicial assistance in civil and criminal matters signed in Prague on 6 December 1985 (which referred to terrorist crimes in its Article 3 in reference to air transport), no other bilateral extradition agreements referring to terrorism-related crimes exist. However, the crimes for which extradition is requested implicitly includes terrorism crimes. It is therefore possible for extradition to be sought for a terrorist crime, when both parties consider the act to fall within the scope of a criminal provision.

This is the formula generally used. 1) The following may be subject to extradition: a) individuals prosecuted for crimes punishable by the laws of the contracting Parties to a maximum term of imprisonment of at least two years or a more serious penalty; b) individuals who, for crimes which are punishable by the laws of both contracting Parties, have been sentenced in a final court judgement by the courts of the requesting State to a period of not less than six months' imprisonment. 2) In the event of a request for extradition for more than one crime, some of which are not subject to the conditions indicated above with regard to the length of the sentence, the requested contracting Party may permit extradition for all the crimes.

Sub-paragraph 3 (f)

Please outline the content of article 380 (1) and (2) of the Code of Criminal Procedure to the extent to which it is relevant for the implementation of this sub-paragraph.

The reference to Article 380(1) and (2) of the Code of Criminal Procedure must be construed to mean that it is not possible to admit into Italy a foreign national who intends to request refugee status when the Border Police have ascertained that the applicant has already been convicted of a crime in Italy: for a wilful crime or a crime committed with malice and intent for which the law provides a penalty of life imprisonment or imprisonment of not less than five years and not more than twenty years (Article 380(1) of the Code of Criminal Procedure); or, outside the sentence limits indicated above, a person who has been convicted of one of the crimes

indicated in Article 380(2) of the Code of Criminal Procedure. This comprises a vast range of different types of crimes, ranging from crimes against the personality of the State (which includes terrorist crimes), prostitution and pornography involving children, aggravated theft and robbery, arms-related crimes (including weapons of war or parts of them, explosives and illegal weapons) and Mafia conspiracy crimes.

Sub-paragraph 3 (g)

Sub-paragraph 3 (g) of the Resolution requests States to ensure "that claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists". Please clarify how Italy intends to meet this requirement in view of Articles 10 (4) and 26 (2) of its Constitution.

Article 10(4) and Article 26(2) of the Italian Constitution exclude the possibility of extradition for political crimes. However, in accordance with established Italian case-law, serious acts of terrorism do not constitute political crimes, but are offences against the fundamental right to life and to physical integrity. Therefore, in the bilateral agreements concluded by Italy, all the crimes foreseen in the international terrorism conventions may be used as a basis for requesting extradition.

In this context, please clarify whether Italy's reservation to the European Convention on the Suppression of Terrorism, done at Strasbourg on 27 January 1977, continues to be valid vis-à-vis the States Parties to the European Convention on the Suppression of Terrorism and explain whether it reflects Italy's practice with regard to other States.

It should be noted that as far as Article 10(4) and Article 26(2) of the Italian Constitution are concerned, which prohibit political crimes from being used for extradition purposes, Italian case-law has for a long time taken the view that this provision cannot be construed as applying to acts of terrorism against defenceless citizens. For the prevailing opinion is that the fundamental rights to life and to personal integrity must be considered. The reservation that Italy submitted for the European Convention on the Suppression of Terrorism done at Strasbourg on 27 January 1977 are therefore still valid and effective in respect of the other Member States (6).

Paragraph 4

Has Italy addressed any of the concerns expressed in paragraph 4 of the Resolution?

Italy pays constant attention to the question of links between international terrorism and the criminal activities indicated in paragraph 4 of Resolution 1373. In this connection, the traffic in human beings is particularly important, for this is closely linked to other activities of the organised criminal underworld such as smuggling, arms trafficking, drugs trafficking, and the exploitation of prostitution. Moreover, it is obvious that huge numbers of people who often reach Italian shores without any identity documents give rise to the risk of infiltration by individuals linked to terrorist organisations. Italy, as a natural bridge in the Mediterranean with Africa, Balkans and the East, is the most sensitive external European border, and the question of combating illegal immigration is therefore both a priority for Italian internal security and Italian foreign policy.

Italy's bilateral work with the countries of origin and of transit (Section 1(2) of the new Immigration Act) provides that the cooperation offered by non-EU countries on combating illegal immigration, and phenomena connected with organised crime and respect for the rules governing the safety of shipping must be assessed and taken into account. This being so, it is necessary to pursue further specific initiatives that have been undertaken with individual countries, and which in many cases have produced successful results. As far as the countries involved, or at the risk of becoming involved, in the illegal trafficking in migrants via the sea, diplomatic work has been undertaken to sensitise every state to the need to ensure that the international rules governing the safety of shipping (the so-called principle of "Port State Control") are enforced in respect of all boats leaving their own ports and their own coasts. Since 1997 Italy has been working through diplomatic channels to draw up international rules to combat the traffic and transport of illegal immigrants by sea, and this led to the adoption by the United Nations of the Protocol Against the Unlawful Traffic of Migrants by Land, Air and Sea, annexed to the United Nations Convention on Transnational Organised Crime, done at Palermo in December 2000.

The question of combating illegal immigration is also a central part of the new legislation enacted in the Immigration Act. The whole mechanism for administrative deportation has been radically overhauled in order to give greater guarantees that the deportation order is actually carried out. On the criminal justice side, the law against aiding and abetting the traffic in human beings have been tightened up, with reduced penalties in the case of those who cooperate with the police and with the courts. The Ministry of Home Affairs coordinates border controls, while the Italian Navy can also assist the policing of shipping. Changes have also been introduced into the law governing asylum rights in order to prevent applications being made solely to evade deportation. Foreign nationals requesting a residence permit or the renewal of an existing stay permit are now photographed and fingerprinted.

Furthermore, Italy has brought the question of illegal migration to the top of the agenda of the European Union and its Member States. The conclusions of the Seville European Council broadly reflect the Italian position. The Council has sent out a strong message regarding visas, readmission agreements, policies for deportation and repatriation, the adoption of laws to combat the organisations which manage this illegal traffic. The targets set for controlling the common borders largely coincide with those proposed in the Feasibility Study on the European Frontier Police Force submitted by Italy. The results in terms of relations with third countries have also been positive, with the incorporation of a clause dealing with migration in cooperation agreements.

Other matters

Could Italy please provide an organisational chart of its administrative machinery, such as police, immigration control, customs, taxation and financial supervision authorities, established to give practical effect to the laws, regulations and other documents that are seen as contributing to compliance with the Resolution.

In this regard, it must be first be stressed the role played by the Financial Security Committee, whose remit and powers to supervise all activities relating to the financing of terrorism were illustrated in detail in the first report submitted to the CTC at the end of last year. In order to illustrate the practical operational

characteristics and the attention being paid to the United Nations in this connection, suffice it to recall that the Committee was the originator of the proposals which Italy submitted for the purposes of extending the list of individuals and terrorist organisations under Resolution 1390.

As far as policing is concerned, the role of the Ministry of Home Affairs should be emphasized, in particular the Public Security Department which is responsible for:

- implementing the Public Security and Order Policy;
- coordinating the technical and operational aspects of the police forces;
- directing and managing the *Polizia di Stato* (National Police Force);
- directing and managing the technical support facilities, which also includes meeting the general requirements of the Ministry of Home Affairs.

The Department is organised into Central Directorates and Offices of the same level, which also have inter-service relations, according to the organisational criteria and procedures established by law. In this connection the police forces responsible for pre-emptive/preventive operations are of primary importance. This force is highly specialised, and at the central level it comprises the "Central Directorate for the Pre-emptive Policing" (D.C.P.P.), which forms part of the Public Security Department, and at the local level the DIGOS Offices which operate at the *Questure* (Provincial Police Headquarters).

In the present phase, pre-emptive/preventive action and law enforcement are targeted mainly at the following:

- domestic and international terrorist organisations;
- subversive organisations whose purposes include incitement to division and to violence on racial, ethnic, national or religious grounds;
- associations dedicated to destroying the integrity, independence and unity of the State, or to overturning the constitutional order using means that are not permitted by law;
- extremist groups pursuing social subversion objectives by recourse to violence and illegal practices;
- military or paramilitary organisations;
- crimes against the public administration whenever the phenomenon itself, and the systematic and serious nature of the crimes committed take on such a magnitude that they harm the credibility and the operation of the institutions;
- illegal immigration and the international traffic of weapons, in respect of aspects relating to the involvement of national and international terrorist organisations;
- secret associations;
- sectarian organisations and congregations pursuing unlawful aims;
- terrorism by computer;
- "group violence" based on ideologies which are marked by systematic aggression;

- episodes of illegal acts by organised groups at sports events;
- other crimes which even indirectly have negative repercussions on the defence and security of the State, the protection of freedoms and the exercise of citizenship rights, and on public security and order.

The "Directorate-General for Criminal Policing" (*Direzione Generale della Polizia Criminale*) is also important, and has the following tasks:

- coordinating judicial police investigations at the national level, with particular reference to searching for and capturing dangerous fugitives and Mafia criminal organisations;
- collecting, analysing and processing data and intelligence relating to more serious crimes;
- international cooperation with foreign countries to combat organised crime with a mutual exchange of intelligence and operational strategies and procedures designed to combat the most serious cases of transnational crime (drug trafficking, money laundering, vehicle trafficking, currency forgery, computer-related and environmental crimes);
- the management of individuals turning State's evidence;
- coordination at the national level of general pre-emptive policing and law enforcement;
- the provision of technical and scientific support to investigating agencies and to the courts for the conduct of inquiries requiring the use of specific professional skills.

In addition to the above, special reference must be made to Section 4 of Law No 438 of 15 December 2001 which empowers, *inter alia*, the specialised investigative units of the Carabinieri with the authority to combat domestic and international terrorism. The Carabinieri have a dedicated unit for this purpose, both for intelligence gathering and investigations, and for dealing with situations demanding a high level of specialisation. With regard to the former, in 1990 the Raggruppamento Operativo Speciale (ROS) (Special Operations Group) was instituted to combat organised crime and terrorism. ROS are members of a central structure based in Rome, whose priority tasks are the analysis, coordination and the provision of technical and operational support, with 26 local "Anti-Crime Sections" to combat crime, working from the District Public Prosecutors' Offices, to assist the investigating magistrates and provide operational responses to their needs.

In particular, the "Anti-Subversion Unit" analyses subversion and terrorism, both national and international, coordinates the work of the "Anti-Crime Sections" and the other territorial units of the Carabinieri, and manages the most important investigations. The 1st and 2nd Investigative Units provide linkage and liaison with the investigations into organised crime, while the 3rd Unit is solely responsible for analysing and studying organised crime. The "Technical Unit", lastly, provides the necessary technological support for investigations using the latest state-of-the-art equipment, together with research and experimental work, and investigations into computer crime.

At the local level, the "Anti-Crime Sections" gather intelligence and conduct investigations into crimes connected with organised crime, terrorism and subversion.

The intelligence and operational work of the "Anti-Subversion Unit" of the Special Operations Group (ROS) and the "Anti-Crime Sections" uses the intelligence gathered nationally by the Provincial Commands and by the 5,000 stations — "Compagnie Stazioni" — which are responsible for local law enforcement.

Lastly, within the Ministry of Interior, mention must be made of the "Office for the Coordination and Planning of Police Forces", to meet the increasingly urgent need to rationalise the structural and operational potential of individual police forces, optimising the use and the distribution of the resources and integrating the organisation and implementation of their services according to a jointly agreed, systematic plan. As an entirely inter-service unit, and because of its particular modus operandi of working in close and direct contact with the Commands and the Central Directorates of the individual police forces, and because of its special position within the police administration, this Office can certainly be defined as a "common home" of all the Italian police forces.

With regard to the question of controlling immigration, it should also be recalled that within the Ministry of Home Affairs, the Department of Civil Liberties and Immigration has been established to perform the functions and tasks of the Ministry of Home Affairs for the protection of civil rights, which include: immigration; asylum; citizenship; religious denominations.

NOTES

(1) The crime of money laundering was introduced into the Italian Penal Code for the first time in 1978. It was originally fairly limited in scope because it only related to the laundering of money or securities deriving from an aggravated robbery, aggravated extortion or kidnapping for the purposes of extortion. During the 1980s the crime of money laundering increased continuously and triggered a process in which the law was overhauled, partly as a result of the legal instruments that were being drawn up internationally, of which the main ones were the following: the Declaration of Principles of the Basel Committee, issued by the "Committee for Bank Settlements and Supervision Procedures", the United Nations Convention Against the Illegal Traffic in Narcotic Drugs and Psychotropic Substances, signed in Vienna on 28 December 1988; and the Council of Europe Convention on Money Laundering, Investigating, Seizing and Confiscating the Proceeds of Crime signed in Strasbourg on 8 November 1990.

At the national level, the adjustment of the crime to comply with the principles of these Conventions was first implemented by Law No 55/90 and then by Law No 328/93. These legal provisions now make it a crime to launder or transfer money, assets or any other utilities resulting from a non-malicious criminal act, or performing any other operations to prevent the identification of their criminal origin (money laundering B Article 648-bis); the use in economic or financial activities of money, assets or other utilities which are the proceeds of crime (re-utilisation Article 648-ter).

In particular, Law No 197/91 (limitation on cash use) introduced provisions to prevent the use of the financial system for money laundering purposes. In short, these provisions provide the following: a prohibition on transferring cash or bearer bonds or unregistered securities between different individuals except through qualified financial intermediaries (banks, SIMs, insurance companies and other

intermediaries and brokers subject to supervision); the obligation on all financial intermediaries, independently of whether or not they are qualified and authorised to operate cash transactions, to identify customers performing operations involving amounts in excess of 20 million lire, to register the data on these operations in a single computerised archive, and to notify any suspicious operations to the authorities.

(2) The highest super-national authority for combating international money laundering which was set up with the OECD, and to which 29 countries including Italy belong.

(3) Today under Section 150 and Section 151 of Law No 388 of 23 December 2000 the UIC provides consultancy services to Parliament and the government regarding the prevention and combating financial and economic crime and is Italy's financial information unit pursuant to Article 2(3) of Decision 2000/642/GAI of the European Union Council of 23 October 2000, setting out the procedures for cooperation between the member States' financial intelligence units, in relation to the exchange of information.

(4) The following categories are indicated: loan recovery for third parties, the custody and transport of cash and securities using private security guards, the transport of cash and securities without the use of private security guards, securities brokers and agents, antique traders, auction houses or art galleries, trade, including the export and import, in gold for industrial purposes or for investment, the manufacture, brokerage and trade in valuable objects, including their import and export, casino management, the manufacture of precious objects by craft companies, loan broking, financial asset agencies, insurance and financial promotion agencies.

(5) Interdepartmental Decree of 27 April 1990.

(6) Reservations made at the time of signature, on 27 January 1977, and confirmed at the time of deposit of the instrument of ratification, on 28 February 1986 — Or. Fr.

Italy declares that it reserves the right to refuse extradition and mutual assistance in criminal matters in respect to any offence mentioned in Article 1 which it considers to be a political offence, an offence connected with a political offence or an offence inspired by political motives: in this case Italy undertakes to take into due consideration, when evaluating the character of the offence, any particularly serious aspects of the offence, including:

a. that it created a collective danger to the life, physical integrity or liberty of persons; or,

b. that it affected persons foreign to the motives behind it; or,

c. that cruel or vicious means have been used in the commission of the offence.

d. Period covered: 01/06/86 — The preceding statement concerns Article(s): 1) enacting legislation, and making other necessary arrangements, to implement the instruments to which it has become a party.

United Nations S/2002/1391

Security Council

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Letter dated 23 December 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached report from Dominica submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I should be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Counter-Terrorism Committee

02-75878 (E) 090103

Annex

Note verbale dated 18 December 2002 from the Permanent Mission of Dominica to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

The Permanent Representative of Dominica to the United Nations presents his compliments to the Chairman of the Counter-Terrorism Committee established pursuant to Security Council resolution 1373 (2001) and has the honour to submit herewith the report prepared by the Government of Dominica pursuant to paragraph 6 of the above-mentioned resolution (see enclosure). The annexes to the report will be sent under separate cover shortly.

The Government of Dominica stands ready to provide the Committee with further reports or information, as necessary.

Enclosure

Report on the implementation of United Nations Security Council resolution 1373 (2001)

Submitted by

the Government of the Commonwealth of Dominica

**to the United Nations Security Council
Counter-Terrorism Committee**

December 2002

INTRODUCTION

The terrorist and attacks on the World Trade Center in New York City and on the Pentagon in Washington, DC on September 11, 2001 received the overwhelming condemnation of the people of the Commonwealth of Dominica. Dominica was among the eighty countries directly affected by the attacks on the World Trade Center, in which one of its nationals was killed.

The Government of the Commonwealth of Dominica expressed its unequivocal condemnation of the terrorist attacks and stressed that no cause can ever justify the use of violence as a means of settling disputes, or legitimize destruction of innocent lives.

The Commonwealth of Dominica has pledged to cooperate fully with the International Community, in accordance with international law and Conventions, in the quest to respond to this threat to international peace and security, has fully supported all United Nations General Assembly resolutions. It has also supported resolutions at the Organization of American States condemning the attack on the United States.

The events of September 11, 2001 have had an immediate and far-reaching impact on two sectors of Dominica's economy, namely tourism and financial services. In response the Government of the Commonwealth of Dominica has implemented a program of economic stabilization to mitigate the effects of the crisis. In addition, on-going discussions are taking place among Ministers of Finance of CARICOM on the elaboration of a comprehensive assistance package for presentation to international finance institutions. So far, Dominica is the first beneficiary of assistance from sister CARICOM states to help in the comprehensive restructuring of its economy.

This report represents the response of the Government of the Commonwealth of Dominica to the mandates of United Nations Security Council Resolution (UNSCR) 1373. To demonstrate its commitment to cooperation with the rest of the international community in the fight against terrorism and trans-national crime, the Government of the Commonwealth of Dominica appointed an inter-agency Task Force to ensure that legislative and administrative measures are implemented to give effect to the resolution.

The Task Force is comprised of officials from the Ministries of Foreign Affairs, Trade and Marketing, Legal Affairs, Immigration and Labour, Finance and Planning, Communications and Works, as well as the Commonwealth of Dominica Police Force. Included in the mandate of the Task Force are the monitoring of implementation of actions to counter terrorism, and responsibility for preparation of reports to the Counter-Terrorism Committee of the Security Council on actions taken at the national level with respect to implementation of UNSCR 1373 in the Commonwealth of Dominica. This report identifies measures already in place in Dominica as well as actions contemplated for effective implementation of UNSCR 1373.

LEGISLATION

The Commonwealth of Dominica has already enacted the following pieces of legislation, which underscore Dominica's commitment to co-operate with the international community in fighting money laundering and other criminal activities. The relevant pieces of legislation are:

- The Extradition Act 1981 (Chap 12:04)
- The Drug Prevention of Misuse Act 1988 (Chap. 40:07)
- The Mutual Legal Assistance in Criminal Matters Act 1990
- The Banking Act of 1991
- The Proceeds of Crime Act, 1993
- The International Business Companies Act of 1996
- The Offshore Banking Act of 1996
- The Money Laundering (Prevention) Act, 2000
- The Exchange of Information Act (2002)

IMPLEMENTATION OF UNSCR 1373

PARAGRAPH 1

(a) **Measures to Prevent and Suppress the Financing of Terrorist Acts**

The Government of the Commonwealth of Dominica is committed to enhancing its capability to prevent and suppress the financing of any terrorist activity of which it has knowledge. The Government of the Commonwealth of Dominica intends to enact appropriate legislation to give effect to the United Nations Security Council Resolution 1373 and the International Convention for the Suppression of Financing of Terrorism adopted by the United Nations General Assembly in Resolution 54/109 of 9th December, 1999.

The Office of the Attorney General, on the recommendation of the Cabinet and Task Force, drafted a Bill entitled "**the Suppression of Financing of Terrorism Bill 2001**". This Bill makes the collection of funds for criminal purposes an

offence, provides for the freezing or seizure of funds, specifies that any person, company or entity who wilfully collects funds with the intention of furthering terrorist objectives to be suspect in the commission of an offence, empowers the Commissioner of Police to investigate the commission of an offence, and empowers the Director of Public Prosecution to prosecute offenders.

The Banking Act of 1991 and the Offshore Banking Act of 1996 provides a regulatory framework for financial institutions. Specifically, where a financial institution is suspected of assisting in the commission of an offence, its license would be cancelled without prejudice to any punishment that may be imposed on any person involved in the commission of the offence.

In preparation for submission to the Dominica Parliament before the end of 2002, the draft **"Suppression of Financing of Terrorism Bill"** was being reviewed to address the following issues:

- Criminalization of the act of terrorism
- Proscribing terrorist and terrorist organisations
- Reporting of suspicious financial transactions regarding terrorists and terrorist organisations

The **Suppression of Financing of Terrorism Bill** was tabled at the December 10, 2002 session of Parliament, and the general debate on this bill will take place at the first sitting of Parliament in 2003.

(b) Offences and Penalties in Dominica for Terrorist Activities

The referenced Bill imposes penalties, in the case of a person, of (EC) one hundred thousand dollars or imprisonment for a period of twenty-five years. In the case of a company, a fine of (EC) five hundred thousand dollars would be imposed without prejudice to any penalty that may be imposed on individuals. In addition, the penalty could be in the form of forfeiture of the funds collected or retained. In the case of a financial institution, its license would be liable for cancellation.

(c) Legislation and procedures to freeze accounts at banks and financial institutions

Section 10 (3) of the **Offshore Banking Act** empowers the Financial Secretary (if he suspects any illegal activity) to apply to the Magistrate to obtain records from a financial institution, and, where there is evidence of illegal activity, the Attorney General is empowered to take appropriate action with the approval of the Court. Legislation and procedures to freeze accounts at banks and financial institutions are also contained in the **Money Laundering Prevention Act. No. 20 of 2000** and the **Proceeds of Crime Act. No. 4 of 1993.**

Among the entities created through the implementation of the Money Laundering Prevention Act is a Financial Intelligence Unit (FIU). The FIU has a broad mandate to gather information on financial transactions.

PARAGRAPH 2

(a) What legislation or other measures are in place to give effect to this subparagraph? What offences in Dominica prohibit (1) recruitment to terrorist groups and (2) supply of weapons to terrorist? What other measures help prevent terrorist activities?

Dominica's commitment to the fight against international terrorism precludes it from providing any form of support, active or passive to entities or persons involved in terrorist acts. Dominica is not an exporter of arms and therefore is not engaged in supplying arms to terrorists.

(b) Early warning mechanisms to allow exchange of information with other states.

The need for the Exchange of Information with other states was realized as far back as May 1990, with the enactment of the **Mutual Assistance in Criminal Matters Act Chap. 12:19.** Additionally, an **Exchange of Information Act** was passed in Parliament on January 27, 2002. Early warning mechanisms are being developed under the direction of the Task Force to prevent the commission of terrorist acts.

The Financial Intelligence Unit (FIU) of the Ministry of Finance and Planning, established in 2001, conducts regular surveillance on financial activity in the on-shore and offshore financial sectors.

(c) What legislation exists to deny safe haven to terrorists?

No legislation currently exists to deny safe haven to terrorists. However, the Suppression of Financing of Terrorism Act will adequately address this matter. All extradition matters are presently addressed under the aegis of the *Extradition Act of 1981.*

(d) What legislation or procedures exist to prevent terrorists acting from Dominica against other states or citizens?

No legislation or procedures currently exist to deal with this matter. The **Suppression of Financing of Terrorism Act** will address this.

(e) What steps have been taken to establish terrorist acts as serious criminal offences and to ensure that the punishment reflects the seriousness of the terrorist acts?

The drafting of the **Suppression of Financing of Terrorism Act** is a pro-active step taken by the Government of Dominica to establish terrorist acts as serious criminal offences and ensure that punishment reflects the seriousness of terrorist acts.

(f) Procedures and mechanisms are in place to assist other states

The **Mutual Legal Assistance in Criminal Matters Act 1990, the Proceeds of Crime Act 1993, and The Money Laundering (Prevention) Act 2000**, provides for assistance to other states.

(g) How do border control in the Commonwealth of Dominica prevent movement of Terrorists? How do procedures relating to issuances of identity papers and travel documents support this? Measures to prevent their forging.

Under section 5 (1) (d) of the Immigration and Passport Act Chapter 18:01, any person who, not having received free pardon, has been in any country convicted of an offence for which a sentence of imprisonment has been passed, and who for this appears to be an undesirable immigrant would be treated as a prohibited immigrant and would not be allowed to enter the Commonwealth of Dominica.

The effectiveness and level of border control is determined by the resources available to the Commonwealth of Dominica Police Force (Immigration and Coast Guard) and the Customs.

Presently passports are issued to non-nationals under the Economic Citizenship Programme. Personnel of the Ministry of Legal Affairs, Immigration and Labour are to ensure the eligibility of applicants before any passports are issued.

Passports are also issued through Registration to persons who become citizens of the Commonwealth of Dominica after residing in the State over a period of seven (7) years and to persons who are married to a Dominican National and who have resided in the State for a period of three (3) years.

The following security features are present in the Commonwealth of Dominica passport: "a thread in the center of the passport which glows under ultra violet light, and a watermark on all pages."

Paragraph 3

(a) Steps taken to accelerate the exchange of operational information.

An Exchange of Information Bill has been passed by Parliament. This Bill addresses some of the concerns of the international community as expressed in UNSCR 1373.

(b) Steps taken to exchange information

The **Mutual Legal Assistance in Criminal Matters Act** allows for the exchange of information between Commonwealth countries. Dominica has also signed a **Mutual Legal Assistance Treaty** with the United States of America.

(c) Steps taken to co-operate in this area.

The appropriate authorities in Dominica are willing and able to co-operate within the confines of relevant legislation.

(d) What are the intentions of the Government of the Commonwealth of Dominica regarding the signature and ratification of the convention and protocols regarding international terrorism?

Even prior to the events of September 11 the Government of the Commonwealth of Dominica had already signed and ratified two of the relevant international conventions and protocols relating to terrorism, namely,

- **International Convention Against the Taking of Hostages (1973), and the**
- **Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (1988).**

The other Conventions are in various stages of review by relevant Government Departments.

(e) Procedures and mechanisms in place for ensuring asylum seekers have not been involved in terrorist activity before granting refugees status.

Dominica does not have a policy on the granting of refugees status to asylum seekers. Such requests are minimal.

CONCLUSION

The Government of the Commonwealth of Dominica remains committed to the fight against international terrorism in whatever guise and wherever it occurs, and to ensuring

that the channels for funding for international terrorism and trans-national crime are permanently disabled. Every effort is therefore being made towards the successful implementation of UNSCR 1373 within the limits of our administrative capabilities.

Technical Cooperation

With respect to paragraph 1.4 of the Guidance For the Submission of Reports Pursuant to Paragraph 6 of the Security Council Resolution 1373 (2001) of September 28, 2001, regarding the identification of areas in which states require additional guidance or technical assistance in implementing the resolution, The Commonwealth of Dominica, as a small state with limited financial and technical resources, will require assistance in the implementation of some of the required counter-terrorism measures.

To strengthen the capacity of the Government of the Commonwealth of Dominica to be pro-active in the fight against terrorism, technical assistance is required in the following areas:

- Training of Police, Customs, Legal and Foreign Affairs, personnel in counter-terrorism techniques, including detection of fraudulent travel documents.
- Acquisition and maintenance of appropriate surveillance technology, information technologies, communications equipment and vehicles.
- Forensic accounting
- Intelligence analysis
- Counter terrorism intelligence and systems with emphasis on the financing component.
- Forensic science.
- Intelligence on trends in the financing of terrorism and training for Financial Intelligence Unit (FIU) Personnel.
- Review of relevant legislation and administrative protocols with a view to amending and updating them.
- Modernization of border control, immigration, and port facilities
- Review of the economic citizen program.

In addition, financial assistance may be required for the upgrading of port facilities and acquisition of equipment, increases in personnel, technical studies, and technology upgrades.

Annexes to the report of Dominica pursuant to paragraph 6 of Security Council resolution 1373 (2001)

- The Extradition Act 1981 (Chap 12:04)
- The Drug Prevention of Misuse Act 1988 (Chap. 40:07)
- The Mutual Legal Assistance in Criminal Matters Act 1990
- The Banking Act of 1991
- The Proceeds of Crime Act, 1993
- The International Business Companies Act of 1996
- The Offshore Banking Act of 1996
- The Money Laundering (Prevention) Act, 2000
- The Exchange of Information Act (2002)
- Mutual Legal Assistance Treaty with the United States of America